fits, of such agreement. *Percival* v. *Colonial Inv. Co.*, 140 Iowa 275, 115 N. W. 941; *Ferguson* v. *Worrall*, 31 Ky. Law Rep. 219, 101 S. W. 966, 9 L. R. A. (N. S.) 1261. Other courts maintain that the covenant runs with the land because of the evident intention of the parties to that effect. *National Life Ins. Co.* v. *Lee*, 75 Minn. 157, 77 N. W. 794; *Noble* v. *Kendall*, 120 Mich. 545, 79 N. W. 810. Of course, where the obligation to pay is, in the original contract, expressly or impliedly made a lien on the lot of the non-builder, it attaches to the lot itself and passes with it into the hands of whatever person the lot may be. *Parsons* v. *Baltimore, etc., Ass'n*, 44 W. Va. 335, 29 S. E. 999, 67 Am. St. Rep. 769; *Osteen* v. *Bultman*, 94 S. C. 496, 78 S. E. 445; *Arnold* v. *Chamberlain*, 14 Tex. Civ. App. 634, 39 S. W. 201; *Mott* v. *Oppenheimer*, 135 N. Y. 312, 31 N. E. 1097, 17 L. R. A. 409. So also, the obligation to pay may be expressly assumed by grantees of the original party wall contractors. *Ellensburg Lodge* v. *Collins* (Wash.), 122 Pac. 602. In some states the obligation to pay is made to run with the land by statute. *Irvin* v. *Peterson*, 25 La. Ann. 300; *Voigt* v. *Wallace*, 179 Pa. St. 520, 36 Atl. 315. The ruling in the principal case accords with the sounder doctrine, but the weight of authority is perhaps *contra*.

PRESCRIPTION—DISABILITY OF SERVIENT OWNER—BURDEN OF PROOF.—The defendant in a suit to try title to land asserted a right of way by prescription. *Held*, the burden of proof rests on the defendant to show that the owners of the servient estate were free from legal disability during the prescriptive period. *West* v. *City of Houston* (Tex.), 163 S. W. 679.

As a general rule, it is not necessary to allege or prove mere matters of defense, which come more properly from the other side. STEPHEN, PLEADING, 350. It is settled that capacity to contract is presumed, and one who would defend on the ground of *non sui juris* must bear the burden of proof. *Moore* v. *Sawyer*, 157 Fed. 826. This general rule has been applied in the case of prescriptive easements. *Fankboner* v. *Corder*, 127 Ind. 164, 26 N. E. 766. But the contrary has also been held. *Saunders* v. *Simpson*, 97 Tenn. 382, 37 S. W. 195.

A similar question has arisen in regard to the nature of the use. The weight of authority holds that the servient owner has the burden of showing that the use is merely permissive. *Fleming* v. *Howard*, 150 Cal. 28, 87 Pac. 908; *Smith* v. *Pennington*, 122 Ky. 355, 91 S. W. 730, 8 L. R. A. (N. S.) 149; *Majerus* v. *Barton* (Neb.), 139 N. W. 208. *Contra, Bradley Co.* v. *Dudley*, 37 Conn. 136.

It is hard to see why an exception to a settled rule should be made in the case of easements, even on the suggested theory that the capacity of the servient owner is an essential element in prescription, and so should be proved by one claiming thereunder. The same theory would apply with equal force in the case of contracts. Possibly the courts have been influenced by the feeling that prescriptive rights are in their nature encroachments, and ought not to be favored.

REFORMATION OF INSTRUMENTS—EXECUTORY LAND CONTRACT—ENFORCEMENT.—Through mutual mistake there was a failure to mention in a

written executory agreement to convey land free from encumbrances, that the land was burdened with a right of way. *Held,* a court of equity will not reform the contract and decree specific performance of the reformed instrument. *Vogt et al.* v. *Mullin* (N. J.), 89 Atl 533. See NOTES, p. 626.

TAXATION—EXEMPTIONS.—A state constitution provided that "real estate belonging to and actually and exclusively occupied by * * * Young Men's Christian Associations * * * not conducted for profit" shall be exempt from taxation; and furthermore that whenever such property "shall be leased or shall be a source of revenue or profit all such buildings and land shall be liable to taxation." A Young Men's Christian Association received a revenue from the letting of sleeping quarters within the building to its members, who were thus better enabled to enjoy the free educational and religious benefits offered by the Association. *Held,* that the income was received from a contract for lodgings and not one of lease that would subject such income to taxation under the constitution; and that as the letting of the rooms was incidental to the main purposes of the charity the income derived therefrom is exempt from taxation. *Commonwealth* v. *Lynchburg Young Men's Christian Association* (Va.), 80 S. E. 589.

By the weight of authority it seems settled under the exemptions of charitable institutions from taxation as found in the constitutions of most states that: (1) Such exemptions should receive a liberal construction. *Book Agents* v. *Hinton,* 92 Tenn. 188, 21 S. W. 321, 19 L. R. A. 289; *Salt Lake Lodge* v. *Groesbeck* (Utah), 120 Pac. 192. (2) If the revenue be obtained from the renting of the property for a pure profit, though the revenue be exclusively devoted to the charity, such income is not exempt from taxation. *Benevolent Society* v. *Kelly,* 28 Ore. 173, 42 Pac. 3; *Young Men's Christian Association* v. *Douglas County,* 60 Neb. 642, 83 N. W. 924, 52 L. R. A. 123. (3) If the revenue sought to be taxed is merely ancillary to and in furtherance of the dominant purposes of the charity the income should be exempt from taxation. *Emerson* v. *Milton Academy,* 185 Mass. 414, 70 N. E. 442.

The decision in the principal case seems sound on both principle and the apparent weight of authority. *City of Philadelphia* v. *Young Women's Christian Association,* 125 Pa. St. 572, 17 Atl. 475; *Salt Lake Lodge* v. *Groesbeck, supra.* The principal decision seems similar to those cases holding that the payment of actual board and tuition charges to a college, or medical expenses to a hospital or sanitarium does not remove such revenue from the constitutional exemptions from taxation. *Scott* v. *Johnsbury Academy* (Vt.), 84 Atl. 567; *Morgan* v. *Presbyterian Church* (Ky.), 101 S. W. 338; *New England Sanitarium* v. *Stoneham,* 205 Mass. 335, 41 N. E. 385.

WILLS—REVOCATION—ADMISSIBILITY OF DECLARATIONS OF TESTATOR TO EXPLAIN EQUIVOCAL ACT.—A will remained in the testator's possession until his death. The codicil was clearly revoked, the testator's signature having been cut off, and the will itself was slightly mutilated. *Held,*